IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7243 of 2007()

CRIME NO.178/2007 OF VARAPUZHA POLICE STATION

PETITIONER/1ST ACCUSED IN CR.NO.178/07 OF VARAPUZHA POLICE STATION

JOSE ANDREWS @ JOFY, AGED 30 YEARS,
S/O. ANTONY, THYKOOTTATHIL HOUSE, KOTHAD,
KORAMBADOM, ERNAKULAM.

BY ADV. SRI.ANIL KUMAR SREEDHARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
S.I. OF POLICE, VARAPUZHA.

BY P.P.SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7243 OF 2007

Dated this the 30th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. He along with the co-accused faces allegations for offences punishable, inter alia, under Secs.304 and 324 read with Sec.149 of the IPC. In prosecution of the common object of an unlawful assembly of which the petitioner was allegedly an important member, the petitioner is alleged to have attacked the informant and the deceased. The victims ran to escape from the miscreants. They were allegedly compelled to jump into a river. No attempt whatsoever was made to save them. The informant swam to safety; whereas the deceased was found missing. Later his dead body was recovered. Investigation is in progress. The petitioner apprehends imminent arrest. Some of the co-accused have already been arrested. Investigation is not complete.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent and may be granted anticipatory bail. The learned counsel for the petitioner finally prays that the petitioner may be directed to surrender before the learned Magistrate or the Investigating Officer. His application for regular bail may be directed to be considered expeditiously.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner may be directed to surrender before the Investigating Officer or the learned Magistrate and seek regular bail in the ordinary and normal course.

4. I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the usual course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the

Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

6. I do not think it necessary to fix any specific date for surrender or issue any further or more specific directions regarding the consideration of the application for bail.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge